

# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	_ [ 1	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO	
09/903,785		07/13/2001	Laurence Sebillotte-Arnaud	210374US0	1492	
22850	7590	11/15/2006		EXAMINER		
C. IRVIN N			OGDEN JR, NECHOLUS			
OBLON, SP 1940 DUKE		ICCLELLAND, MA	ART UNIT	PAPER NUMBER		
ALEXANDRIA, VA 22314				1751		

DATE MAILED: 11/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No.  Office Action Summary  Application No.  99903,765  Examiner Necholus Ogden  1761  - The MALLING DATE of this communication appears on the cover sheet with the correspondence address -  Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.  Eastlance for many by a shelation ander the provisions of 37°CFR 1.138(s). In or event, fleaveuer, may steply the strength and strength proteins and the strength of the provision of the communication, event fleaveuer, and plate the provision of the communication, event fleaveuer application become AbANDONED 38 U.S.C. § 133).  Status  1   NO period for reply is application in a construction of the provision of the communication, event fleave, fleat, may reduce they correctly platent term adjustment. See 37 CFR 1.704(s) and the provision of the communication, event fleave, fleat, may reduce they correctly platent term adjustment. See 37 CFR 1.704(s) and the provision of the communication of the communication, event fleave, fleat, may reduce they correctly platent term adjustment. See 37 CFR 1.704(s) and the provision of the communication of the communication of the communication of the communication of the provision of the prov					11 /				
Examiner   Nacholus Ogden   1751			Application No.	Applicant(s)					
Necholus Ogden   1751			09/903,785	SEBILLOTTE-ARNAUD ET AL.					
Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.  Extensions of ther may be enabled under the provision of 37 CFR 1.136(s). In or event, however, may a reply be timely field after SD (6) MONTHS from the mailing date of this communication of 37 CFR 1.136(s). In or event, however, may a reply be timely field after SD (6) MONTHS from the mailing date of this communication of 37 CFR 1.136(s). In or event, however, may a reply be timely field after SD (6) MONTHS from the mailing date of this communication.  Fallules to reply within the set or extended period for reply will, by status, cause the application to become ARANDHSD (8) US C. § 1309. Any veply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any seared patient term adquirement. See 37 CFR 1.704(s).  Status  1)∑ Responsive to communication(s) filed on 23 August 2006.  2a) This action is FINAL.  2b)∑ This action is non-final.  3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4)∑ Claim(s) 1-22 is/are pending in the application.  4)∑ Claim(s) 1-22 is/are allowed.  6)∑ Claim(s) 1-22 is/are rejected.  7) Claim(s) 1-22 is/are rejected.  7) Claim(s) 1-22 is/are rejected.  10) The specification is objected to by the Examiner.  4)D Claim(s) 1-22 is/are rejected.  10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in aboyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.  Priority under 35		Office Action Summary	Examiner	Art Unit					
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WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.  Extensions of time may be available under the provisions of 37 CFR 1.78E(s). In no event, however, may a reply be simely filled after SIX (8) MONTHS from the making date of this communication.  If NO private for reply is appetited above, the maximus statutory period will apply and will project SIX (8) MONTHS from the maling about of this communication.  If NO private from the making date of this communication.  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filled, may reduce any representation in the months after the mailing date of this communication, even if timely filled, may reduce any rearred patient term adjustment. See 37 CFR 1.704(s).  Status  1) Responsive to communication(s) filled on 23 August 2006.  2a) This action is FINAL.  3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) Claim(s) 1-22 is/are pending in the application.  4a) Of the above claim(s) is/are withdrawn from consideration.  5) Claim(s) 1-22 is/are rejected.  7) Claim(s) is/are allowed.  8) Claim(s) 1-22 is/are rejected to 8.8 Claim(s) is/are objected to 8.8 Claim(s) is/are objected to 8.8 Claim(s) is/are objected to 9.8 Claim(s) is/are objected to 9.8 Claim(s) is/are objected to 9.8 Claim(s) is/are subject to restriction and/or election requirement.  4. Application Papers  9) The specification is objected to by the Examiner.  Application Papers  10) The drawing(s) filled on   is/are: a)   accepted or b)   objected to by the Examiner.  Application Papers  11) Application from the quay objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  11) Acknowledgment is made of a claim for foreign		• •	ears on the cover sheet with the c	orrespondence address					
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2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  3) Information Disclosure Statement(s) (PTO/SB/08)  Paper No(s)/Mail Date 12/05.  Paper No(s)/Mail Date 12/05.  Paper No(s)/Mail Date 12/05.  Paper No(s)/Mail Date 12/05.	1) Notice 2) Notice 3) Informa	of References Cited (PTO-892) of Draftsperson's Patent Drawing Review (PTO-948) ation Disclosure Statement(s) (PTO/SB/08)	Paper No(s)/Mail Da 5) Notice of Informal P	ate					

Application/Control Number: 09/903,785 Page 2

Art Unit: 1751

#### Response to Amendment

1. Applicant's request for reconsideration of the finality of the rejection of the last

Office action is persuasive and, therefore, the finality of that action is withdrawn.

#### Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

### Claim Rejections - 35 USC § 103

- 3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
  - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- 4. The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
  - 1. Determining the scope and contents of the prior art.
  - 2. Ascertaining the differences between the prior art and the claims at issue.
  - 3. Resolving the level of ordinary skill in the pertinent art.
  - 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
- 5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-22 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Uemura et al (5,14,760).

Uemura et al disclose a composition for treating pores on the skin comprising 30% by weight of a polymethacryloxy ethyl trimethyl ammonium chloride, 5% by weight of polyethylene glycol 200, 1% by weight of polyoxyethylene hydrogenated castor oil 40 EO adduct, 1% by weight of squalene, 3% by weight of 1-hexyl-3-undecamethylhexasiloxane propynyl glycerol, 10% by weight of silica, 0.5% by weight of perfume, an antiseptic and balance being water (page 14, Table 6, Example 7).

As this reference teaches all of the instantly required it is considered anticipatory.

Uemura et al is silent with respect to the characteristic limitations (i.e. complex modulus G and loss angle) however, the examiner assets that it would have been inherent to the compositions of Uemura et al to exhibit similar characteristics given that the compositions are anticipated and absent a showing to the contrary.

- 7. Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glenn, Jr. et al WO (96/28140) or Glenn, Jr. et al (6,277,797).
- 8. The disclosures of WO '140 and '797 are similar. Therefore, the column and line reference is to the WO '140 reference.

Glenn, Jr. et al discloses a skin cleansing composition comprising 0.5 to 10 parts by weight of fumed silica (page 5, lines 4-37); 30-80 parts by weight of water (page 17, lines 5-11); 5-30 parts by weight of a lathering surfactant such as alkyl ether sulfate, betaines, alkyl polyglucosides and polyoxethylene esters of fatty acids (page 15, line 34-page 17, line 4), and optionally 0.5-20% by weight of polyols such as polyethylene glycol (page 17, line 21-page 18, line 28).

Glenn, Jr. et al do not specifically teach each of the components with sufficient specificity to anticipate the claims.

It would have been obvious to one of ordinary skill in the art to have formulated to the claimed skin cleansing composition as suggested by Glenn, Jr. et al because such skin cleansing compositions of Glenn, Jr. et al teach and require each of the claimed components in their requisite proportions and would have been obvious to the skilled artisan in the absence of a showing to the contrary.

## Response to Arguments'

9. Applicant's arguments with respect to claims 1-22 have been considered but are moot in view of the new ground(s) of rejection.

#### Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Necholus Ogden whose telephone number is 571-272-1322. The examiner can normally be reached on M-T, Th-Fri.

Art Unit: 1751

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on 571-272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Necholus Ogden Primary Examiner Art Unit 1751

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